

**AUG 28 2003**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

**CATHY A. CATTERSON  
U.S. COURT OF APPEALS**

GEORGE E. SMALLWOOD, III,

Plaintiff - Appellant,

v.

GALE A. NORTON; INTERIOR BOARD  
OF LAND APPEALS; UNITED STATES  
BUREAU OF LAND MANAGEMENT,  
AK STATE OFFICE; LLOYD SCHADE,

Defendants - Appellees.

No. 02-35995

D.C. No. CV-01-00266-RRB

MEMORANDUM\*

Appeal from the United States District Court  
for the District of Alaska

Ralph R. Beistline, District Judge, Presiding

Argued and Submitted August 14, 2003  
Anchorage, Alaska

Before: PREGERSON, CANBY, and McKEOWN, Circuit Judges.

George E. Smallwood appeals the district court's dismissal for lack of  
standing of his appeal of a decision of defendant Bureau of Land Management

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\* This disposition is not appropriate for publication and may not be cited to or by  
the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

(BLM) to award a patent on 27.5 acres of land to co-defendant Lloyd Schade.

We lack jurisdiction to hear Smallwood's appeal of the district court's decision upholding the BLM because Smallwood did not file his notice of appeal within sixty days of the entry of judgment by the district court. *See* Fed. R. App. P. 4(a)(1)(B). The fact that Smallwood filed his notice of appeal within sixty days of the district court's order fixing the award of costs does not make his appeal timely, because orders taxing costs do not operate to toll the appeal deadline. *See* Fed. R. Civ. P. 58; *Buchanan v. Stanships*, 485 U.S. 265, 268-69 (1988). Thus, we must dismiss Smallwood's appeal of the judgment for lack of jurisdiction. *See Farley Transp. Co. v. Santa Fe Trail Transp. Co.*, 778 F.2d 1365, 1368 (9th Cir. 1985).

Smallwood's appeal is timely only with regard to the order assessing costs. Because Smallwood, in his reply brief, withdrew his challenge to the costs awarded by the district court, we treat the issue as conceded and affirm the district court's costs order.

**DISMISSED IN PART AND AFFIRMED IN PART.**